

NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

Vol. 7, No. 7, September-October, 1955

Philadelphia, Pa.

Senate Committee to Hear C.O.'s

White House OK's Prosecutions

The most recent move in the long campaign of the Central Committee for Conscientious Objectors to get the United States government to halt the policy of second prosecutions of conscientious objectors has again met an almost total lack of understanding. The White House staff is responsible for the latest rebuff.

Two hundred and three conscientious objectors were prosecuted a second time during World War II, and two men were prosecuted three times. An undetermined number of C.O.'s were prosecuted under both the 1940 draft law and the present act. At least 13 C.O.'s have been convicted twice under the current law.

Although some judges have seen the moral issue clearly and placed men on probation after the second conviction instead of sending them back to prison, others have given severe sentences.

In all cases to date, the courts have upheld the legality of the second prosecutions.

Representations have been made by CCCO and other organizations to the Department of Justice requesting that these prosecutions be halted as a matter of policy. The American Civil Liberties Union has just called this matter to the attention of the Attorney General again. These various representations have failed in the past, although they have served a valuable function in keeping the issue before public officials.

Eisenhower Interview Requested

In the committee's latest move, CCCO wrote to President Eisenhower last June asking for an appointment for a delegation to discuss this problem of conscience. The request was acknowledged with the statement that the problem would be investigated.

In a letter to CCCO dated September 13 and signed by J. William Barba, Assistant to the Special Counsel to the President, a report was given on the investigation. The letter reviewed the facts well-known to CCCO on the types of violations of the draft law committed by C.O.'s. Barba then stated, "In no manner, however, are such prosecutions related to or based upon religious convictions." No reasons for such a starkly false conclusion were given.

The letter concluded that "Failure to institute such prosecutions, obviously, would contravene the intent of the law."

No mention was made of the request for a delegation to visit the President. CCCO co-chairmen Ray Newton and A. J. Muste have replied that the restatement of the problem was not particularly helpful and that an interview to discuss the vital issues involved is still desired.

Testimony to be Given on Infringement of Religious Liberty

The United States Senate Committee on the Judiciary has appointed a Subcommittee on Constitutional Rights. Senator Thomas C. Hennings, Jr., of Missouri is chairman of the subcommittee. The other two members of the committee are Joseph C. Mahoney of Wyoming and William Langer of North Dakota.

In a new type of investigation for current times, the committee intends to look into the extent to which the American people feel that the Constitution, and especially the Bill of Rights, has been correctly interpreted and observed by the government. The committee is starting with the First Amendment and working its way through the Bill of Rights, the first ten amendments, clause by clause.

The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the rights of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Senate inquiry will begin early in October with an examination of the freedom of religion phrases.

The staff of the committee recognizes conscientious objection as an area of vital importance where questions of violation of religious freedom have been raised. The chief counsel for the subcommittee was in touch with CCCO for information and suggestions even before the plans for beginning with the inquiry were announced in the press.

CCCO submitted for consideration of the committee the many problems familiar to the readers of NEWS NOTES including:

1. The fact that the courts have held that conscientious objection is not protected by the First Amendment.
2. The clause of the draft law and naturalization law requiring a belief in a Supreme Being for recognition as a conscientious objector goes, we believe, beyond the constitutional authority of Congress because it defines religion, is a religious test for a special privilege, and discriminates against some religious faiths.
3. The requirement that conscience be motivated by

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Prosecutions Explained

From time to time readers of NEWS NOTES write CCCO and ask for more specific information on the legal basis for second prosecutions. Most laymen view the repeated "cat and mouse" prosecutions as a violation of the constitutional prohibition against being "twice put in jeopardy of life or limb" for the same offense.

NEWS NOTES has probably helped confuse the technical issue by calling the second offense "essentially the same offense," "morally double jeopardy," "the same offense, as far as the C.O. is concerned," etc. Such descriptions of the second prosecution may be justified from the standpoint of ethics, but the courts have ruled unanimously up to this time that a second prosecution is not double jeopardy from the standpoint of law.

In the second or third prosecution the alleged illegal act may be exactly the same but, if so, the date will be different. For example, a man may seek I-O classification as a conscientious objector willing to perform civilian work, but he gets a I-A classification. He is ordered to report for induction July 10, 1952, but he refuses to report. He serves a prison sentence, again tries for I-O but ends up I-A. He gets another order to report for induction, this time for August 14, 1955. He refuses to report and is convicted again. The Department of Justice calls this "a similar but separate offense."

As far as the Department of Justice is concerned the man described above is in the same position as a bank robber who robs the Podunk National Bank on July 10, 1952, and again on August 14, 1955. The C.O. is not sentenced on the general charge of refusing induction into the army. He is charged with refusal of induction at two different times. The bank robber is not prosecuted on a general charge of robbing banks, but rather with robbing the same bank in two distinct acts at two different times.

Most of the second prosecutions are not like the above example but are similar to those of the Doty brothers and Vail Palmer which have been reported in detail in NEWS NOTES. In those cases the men refused to register and served prison sentences for that refusal. They were then registered by prison officials who sent the registrations to the local draft boards. The men were then eventually ordered to report for induction into the army, and they refused to report. In these cases the men are sentenced the second time for refusal to report for induction instead of refusal to register, so both the date of the offense and the technical nature of the offense are different. Irrespective of this legal distinction, the Dotys and Vail Palmer feel that they have committed a single offense, namely, conscientious refusal to cooperate with conscription.

An interesting sidelight on this technical problem is that these men could not be convicted of the offense they are willing to stipulate they committed, refusal to cooperate with conscription. Technically, there is no such crime. A valid indictment for violation of the draft law must charge a specific act of commission or omission and must specify the time and place of the alleged illegal act.

In the light of this holding on the technical validity of the second prosecution, no District Court judge is apt to acquit a C.O. on the grounds of double jeopardy. How-

SENATE TO HEAR C.O.'s

(Continued from page 1)

religious training and belief discriminates against sincere men who are equally worthy of recognition but who state their position on other grounds.

4. The conscience of the absolutists who refuse to register or accept civilian work is denied recognition.

5. Many C.O.'s have faced repeated prosecutions for their conscientious refusal to participate in conscription.

6. The names of informants who give information or misinformation to FBI agents investigating appeals for C.O. classification in the draft are kept secret, as is all of the actual FBI reports, even though the lack of such information may send a C.O. to prison.

7. Amnesty has been denied the violators of the 1940 draft law, including many conscientious objectors.

8. The New York law providing for compulsory participation in civilian defense activities has resulted in the prosecution of persons acting on religious motivation.

CCCO pointed out "Congress has attempted to grant recognition of conscience under the draft law in a way consistent with the Bill of Rights and our democratic principles. Perhaps the majority of the citizens of the United States are unaware of the fact that men go to prison in this country today because of their conscientious or religious beliefs. . . . The limitations on conscience in relation to conscription enumerated above clearly amount to more restrictions and result in more punishment than most persons seem to think the First Amendment allows."

Questionnaires Used

The Senate committee has sent out questionnaires to hundreds of persons and a number of organizations on the general scope of the committee's assignment. The committee is also seeking statements from individuals and organizations concerned with the area of inquiry.

CCCO and the National Service Board for Religious Objectors are coordinating the testimony relating to conscientious objectors. The number of witnesses to be heard will probably be quite limited, but the witnesses will include at least one conscientious objector who has faced multiple prosecutions.

If present arrangements can be carried through, the first witness on the subject will be Harrop Freeman testifying for CCCO that in his opinion the First Amendment does protect the right of conscientious objection to war. Freeman is a Cornell University Professor of Law who has handled many cases in court involving conscience.

The subsequent testimony will show the difficulties and infringements of conscience which have developed from Congress passing laws based on the assumption that conscientious objection to war is a privilege which may be granted, withheld, or restricted as Congress wishes.

ever, the judges can, and a number of judges do, place the C.O. on probation so he need not go back to prison. Another alternative for the judge is to give a one day sentence on the second round, as was done on two cases in Philadelphia.

Briefly Noted

The extension of the draft law and the new reserve bill do not change the status of conscientious objectors except that I-A-O's will be subject to the reserve provisions if they are inducted after August 9, 1955, the effective date of the bill. I-A-O's will continue to be exempt from the use of weapons in their reserve training.

The age limit for special registrants (doctors' draft) was lowered from 51 to 45. This change should be noted in your copy of the Handbook for Conscientious Objectors on page 16 in the appropriate place in the explanation of the V-A classification.

* * *

The Navy has asked for 56,000 men to be drafted by Selective Service in the next few months. This will mean that some I-A-O's may serve in the Navy. It will also mean that the age at which men are called for the army or civilian work may be lowered in some states, because of the increase in the number of men to be drafted.

* * *

The Fund for the Republic has just announced the winners in a TV script contest dealing with problems of civil liberties. One of the winners was a script entitled "The General's Other Son." The script deals with the difficulties of the General when one of his sons turns out to be a conscientious objector.

* * *

The secretary's annual report was submitted to the CCCO committee September 16. It is a brief survey of the work of the committee during the fiscal year ending August 31, 1955. Copies are available to anyone interested. If you would like to have one, just drop a card to CCCO.

* * *

It has been suggested that we publicize the after business hours telephone number of CCCO. The number is Laurel Springs (N. J.) 4-0310 J12. Calls should be placed person to person to Lyle Tatum at that number. A personal call to Lyle Tatum, Philadelphia, will get the same number after some delay.

* * *

The decision of the magistrate on the New York civilian defense cases (See NEWS NOTES, July-August, 1955.) originally set for September 14 has been delayed until September 28. At that time it is expected that the magistrate will merely rule on whether a jury trial is available to the defendants. The actual trial, whether before the magistrate or a jury, will probably not come up before November.

* * *

The petition for certiorari in the Palmer case has been filed. The government has been given an additional twenty days to decide on whether to oppose the petition or let it stand uncontested. A decision is expected in October on whether or not the Supreme Court will review the case.

* * *

The question posed in this column a few issues ago about possible changes in NEWS NOTES did not draw a great deal of response. However, all of those who com-

AFSC to Aid Conscience Cases

The American Friends Service Committee has established a new program to give legal assistance to individuals in difficulty because of a stand they have taken on the basis of conscience. The program is financed by a grant of \$150,000 from the Fund for the Republic. \$20,000 of the grant was earmarked for the financial assistance of the families of the persons facing severe economic difficulties as a result of the problems growing out of the conscientious position taken.

The grant was a result of a growing concern within the Society of Friends that in these days of increased pressures toward conformity more should be done on the broader scope of problems of conscience. Although Friends have been active in working on the problems of conscientious objectors to war, little concrete support has been given to persons whose conscience has got them into trouble in other areas.

Initial grants were to the defense of those arrested in the civilian defense demonstrations in New York City, to a California church denied tax exemption status because it did not file a loyalty oath, and to a California professor who lost his position after refusal to answer some questions about his political affiliations. In each of these cases the assistance granted was much less than the total needed, so the persons in difficulty will continue to need the financial support of concerned individuals.

Little of the money is to be spent on traditional C.O. v. the draft type of cases. CCCO will continue its work in this field in cooperation with AFSC in some cases as in the past. The AFSC program will be administered separate from their C.O. Services Program. However, George Willoughby, Secretary of the C.O. Program, is serving as Acting Director of the new Rights of Conscience Program pending selection of the director.

mented agreed that NEWS NOTES should keep its present limited scope of news coverage and remain as concise as possible.

* * *

Bradford Lytle has written an interesting and well done booklet entitled "Conscientious Objectors' Guide to Cook County Jail." The booklet was published by the Chicago Regional Office of the American Friends Service Committee, 59 East Madison Street, Chicago 2, Illinois, and is available from them for 35c.

Although the booklet was prepared primarily to assist in the orientation and preparation of C.O.'s expecting to spend time in the Cook County Jail, it will be of interest to many other ex-prison C.O.'s and their friends. The booklet is based on Lytle's personal experience in the jail and interviews with the administration of the institution.

* * *

If you have friends who should receive NEWS NOTES, send us their names. A post card is OK. We'll send them a sample copy and a card they can return if they want to be on the mailing list.

Finally, there is something alien to our sense of justice and right that the order of an administrative body of laymen, the factual basis of which cannot be inquired into by a court or jury, in effect, by depriving him of a jury trial on the question of his guilt or innocence, makes a felon of a civilian and deprives him of his liberty.

As long, therefore, as the law stands as it is now written and construed, it is and will continue to be of the first importance that the predicate for such conviction without trial by jury be at the least laid with the utmost fidelity not only to every substantial safeguard and right which the law has accorded the objector but also to the procedural requirements compliance with which is essential to the validity of board orders.

Joseph C. Hutcheson, Jr., Chief Judge, United States Court of Appeals, Fifth Circuit, in *Olvera v. U.S.*, 223 F.2d 880 at 884, in decision reversing the conviction of a Jehovah's witness charged with refusal to perform civilian work.

Muslim C.O. Arrested

Although CCCO is concerned about the problems faced by Muslim objectors, it has not been possible to establish any liaison with them. From time to time inquiries are received from persons interested in the position taken by these men. The following news item is reprinted from the *Cincinnati Enquirer* as a good concise statement of the position of the Muslims as they generally report it.

"Harold Hicks, 18, 1610 Freeman Ave., who insists that Allah gave him the name Harold 'X,' was arraigned before Federal Judge John H. Druffel yesterday on a charge of failing to register for the draft.

"Hicks told Judge Druffel, who conducted the arraignment in the absence of Commissioner Graham P. Hunt, Jr., that he would rather go to prison than go into the Army. Judge Druffel placed him under \$5,000 bond and set a hearing for July 20.

"At the time of his arrest by agents of the Federal Bureau of Investigation, Hicks said he had no intention of registering for Selective Service or serving in the

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THE COURT REPORTER

I PROSECUTIONS

Sentences

(There have been no sentences reported to NEWS NOTES since the July-August issue of The Court Reporter.)

Arrests

New York—Mordacai Rubin

II RELEASED FROM PRISON

On parole

8-10-55 Harlan McCall
9-10-55 Howard Roberson
9-21-55 Murray Scheel

On conditional release

9-12-55 Fred Hildebrand

III MEN CURRENTLY IMPRISONED

Federal Detention Headquarters, New York City—
John Bendik*

Milan, Mich.—Carl Nead, Peter Yoder

Mill Point, W. Va.—Clifton Campbell, Elmer Yoder, Amos Mast

Seagoville, Tex.—Bill Passmore, William Moser
Springfield, Mo.—Clarence Bryan, John Forbes, Richard Arnold

Tallahassee, Fla.—Thomas Tamblyn

Texarkana, Tex.—Paul Doty, Joel Doty, Sid Doty, Orin Doty, Theodore Bell, Roosevelt Patrick, Isaac Pennington, Edgar Lee Hundley

Tucson, Ariz.—James Francy

Institution not verified—Enos Yoder, Levi Lehman, Abraham Bontrager

Total number of C.O.'s convicted since 1948 to date: 303 (This is a minimum number, since J.W.'s and Muslims are not included and we miss a few.)

*NEWS NOTES reported incorrectly in past issues that John Bendik was at Danbury. He was originally assigned there, but his designation was changed so that he has been serving his sentence at Federal Detention Headquarters in New York City.

armed forces, as he had already registered in the Temple of Islam.

"Hicks told the FBI agents his Islam religion teaches him knowledge of himself, and that the U.S. Government will be destroyed by Allah when the time comes. He denied being a citizen of the United States, though he admitted being born in Cincinnati."

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